SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 371

UNITED STATES NATIONAL BANK IN JOHNSTOWN and FIRST NATIONAL BANK OF SOUTH FORK,

Petitioners,

vs.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK and LESTER LARIMER, Trustee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ROBERT L. ROSSER,
Counsel for Petitioners.

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vs.,

CHASE NATIONAL BANK OF THE CITY OF NEW YORK AND LESTER LARIMER, TRUSTEE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Justices of the Supreme Court of the United States:

The petitioners pray that a writ of certiorari be issued to review a decree of the United States Circuit Court of Appeals for the Third Circuit (R. 79-86), which reverses an order of the United States District Court for the Western District of Pennsylvania which sustained the order of the Referee holding that the United States National Bank of Johnstown and the First National Bank of South Fork were entitled to maintain their position as lien credi-

tors against the estate of Harvey C. Stineman, bankrupt (R. 75-76).

The respondents are the Chase National Bank of the City of New York, and Lester Larimer, ' tee in bankruptcy for the estate of Harvey C. Stineman.

Statement

On June 10, 1926, Harvey C. Stineman was adjudicated a bankrupt upon a voluntary petition in bankruptcy and the case was referred to a referee. The principal asset of the bankrupt estate was an undivided one-sixth interest in a large acreage of valuable coal lands, a considerable portion of which was being operated by lessees and producing substantial royalties. The value of the interest of the said bankrupt estate in and to said asset was appraised and fixed in the amount of $90,000.00.

At the date the petition was filed and of adjudication, the United States National Bank of Johnstown, and the First National Bank of South Fork, were respectively, first and second judgment lien creditors, having procured judgments against the bankrupt, Harvey C. Stineman, more than four months prior to the time the petition was filed and the date of adjudication. The said real estate had no other incumbrances upon it.

The United States National Bank of Johnstown is a corporation created under and by virtue of the laws of the United States, and carrying on business in the City of Johnstown, State of Pennsylvania. The First National Bank of South Fork is a corporation created under and by virtue of the laws of the State of Pennsylvania, and carrying on business at South Fork, Pennsylvania.

On January 8, 1927, the United States National Bank of Johnstown filed a secured claim in the bankruptcy proceedings for the amount of $10,000.00, and recited as its security

the lien of the judgment hereinabove referred to (R. 10-11). On June 29, 1926, the First National Bank of South Fork filed a secured claim with the referee for the sum of $18,463.45, and recited therein as its security, the judgments it had procured against the bankrupt (R. 19-20).

Chase National Bank of the City of New York (hereinafter referred to as "Chase Bank") is a general creditor herein, having filed its claim in the amount of $55,231.98 on May 14, 1935. This claim arose out of an indebtedness of the bankrupt to the Equitable Trust Company (to which the Chase Bank is the successor) originally in the amount of $94,000.00. Said indebtedness was evidenced by the bankrupt's demand collateral note, and after the sale of the collateral deposited by the bankrupt, the claim was originally filed in these proceedings in the amount of $74,153.00 on June 29, 1926. As exceptions to the allowance of this claim was filed, after hearing thereon, the claim was finally allowed for the amount of $55,231.98.

The total amount of unsecured claims, exclusive of the secured claims of the United States National Bank of Johnstown, and the First National Bank of South Fork, aggregate in the approximate amount of $225,000.00.

On December 31, 1929, an important meeting of creditors was held because the secured, or judgment lien creditors, were emphatically pressing for payment of their claims, and insisting upon their proceeding upon the security of their liens. This meeting was attended by the trustee, his attorney, counsel for the Chase Bank, the judgment lien creditors, the bankrupt, and many other creditors, and attorneys representing creditors. The practically unanimous consensus of opinion expressed by the trustee and creditors was that *"if the lien creditors foreclosed upon their liens, little, if anything, would be left for general creditors"* (R. 25). It was then proposed by Mr. Little,

attorney for the trustee and also for the Chase Bank, that *"the estate be divided into two items; one item showing funds arising wholly from the real estate which does not include any of the leases or the funds from any of the leases; the other fund should be made up of all royalties, rentals, or dividends on stocks or bonds. The first fund to go to the first judgment creditor; the second fund to be pro rata divided among all creditors"* (R. 27, 57). The judgment lien creditors, the trustee, and all other creditors assented to this proposal, and it was so agreed and stipulated in the record, and administration of the estate from that time on proceeded on this basis (R. 27). Further, this agreement among all the creditors was with *the specific understanding that the liens were to remain intact to the judgment lien creditors until their claims had been paid in full.*

Thereafter, there were seven dividends arising from the general fund (R. 27) and four dividends arising out of the real estate fund (R. 60-61). All of the creditors, including the Chase Bank, had notice and knowledge of such distributions, and acquiesced thereto, and participated therein, and did receive dividends on their unsecured claim (R. 27, 61). *No exceptions were ever taken to the orders for distribution.*

Later, the United States National Bank of Johnstown was liquidated (and its affairs are now fully closed) and the judgment of the said bank was assigned and transferred, for value, to the United States National Bank *in* Johnstown on October 28, 1942 (R. 54). All dividends paid prior to March 16, 1942, were paid to the Liquidating Trustees of the United States National Bank of Johnstown. The only dividend received by the United States National Bank *in* Johnstown were $329.93 out of the personal fund, and $68.33 out of the real estate fund. The United States National Bank *in* Johnstown is now entitled to all of the

rights, title and interest in and to the said judgment lien claim that were possessed or had by the United States National Bank of Johnstown.

Your petitioners contend that the determination of the United States Circuit Court of Appeals for the Third Circuit, made and entered on the 7th day of May, 1946, was erroneous and violative of their constitutional rights; that the said determination is based upon erroneous conclusions of law, and that error has occurred in reversing the order of the District Court of the United States for the Western District of Pennsylvania.

Jurisdiction

Jurisdiction of this Court is invoked under Section 240-A of the United States Judicial Code as amended by Act of February 13, 1925, 28 U. S. C. A., Sec. 347.

Questions Presented

1. In a bankruptcy proceeding, where the value of an asset is far in excess of the value of the liens asserted against it, has the Court the right and power of allowing the trustee to retain and administer such property for the benefit of creditors?

2. Will the Bankruptcy Court sustain and uphold a plan for administration and distribution of the assets to which the lien attaches, where such plan is proposed and promoted by the trustee and his attorney, and such plan is accepted and agreed to by all creditors, both secured and unsecured, and which plan provides that judgment lien creditors shall receive the proceeds from the sale of real estate, and in addition thereto, also share on a pro rata basis with general creditors in funds derived from personalty?

3. In the above or foregoing question, where such a plan for administration and distribution of the assets of the estate was proposed to judgment lien creditors for the sole and express purpose of inducing them to forbear and refrain from enforcing their liens so that unsecured creditors might also receive some benefit and share in the estate, and where such a plan has been accepted and agreed to and approved by the trustee and all creditors, shall a bankruptcy court acting under equitable principles and powers rule that such secured creditors have waived their liens to the security by their acceptance of dividends on a pro rata basis with general or unsecured creditors?

4. Where such a plan as above stated for the administration and distribution of assets of the bankrupt estate has been accepted and agreed to by the trustee and creditors, both secured and unsecured, and the secured lien creditors in consideration of their forbearance to enforce their liens are to be allowed to share a general fund on a pro rata basis with unsecured creditors, may a general creditor who was a party to such plan and was active in promoting the plan, and who has also received seven dividends over a period of many years, now come in and object and claim the secured lien creditors had waived their liens or security, or is he equitably estopped by his acts and conduct?

5. Did not the acts and conduct of the trustee, in effect and purpose, amount to an election to redeem the property on an installment or deferred payment plan, after having agreed with the secured creditors as to the value of their security, and are not creditors who participated in such agreement and acquiesced thereto now estopped from objecting thereto, and are not the acts and conduct of the trustee attributable to them?

6. Did the Court commit error in holding that the "Amended Liquidated Claim" of the United States National Bank of Johnstown contained no recital of their security when reference was made to the judgment they had procured against the bankrupt"?

7. Was the majority opinion of the Court of Appeals in error in their reversal of the order of the District Court?

8. Is it against public policy or interest for the trustee, the lien creditors, and all general creditors of the bankrupt estate who are the only persons having an interest, or concerned with the affairs of the bankrupt, to form a plan for distribution of the assets on a fair and equitable basis?

Reasons for Granting the Writ

1. A bankruptcy court is a court of equity seeking to administer the law according to its spirit, and not merely by letter. Proceedings in bankruptcy are generally in the nature of proceedings in equity and frequently call for the exercise of full equity powers in the ascertainment and proper enforcement of the equities of the parties.

2. The determination by the court below was in disregard of the vested rights of your petitioners, and the effect of the judgment of that court is to deprive the petitioners of its property and lien rights in the asset of the bankrupt estate to which it attached.

3. Petitioners contend that at no time throughout the bankruptcy proceedings did they directly or indirectly manifest, by act, intention, or deed, a waiver or release of their liens, but on the contrary they did always act, govern and conduct themselves in such a manner as to affirmatively

show they relied and intended to preserve their liens (R. 30, 31).

4. Petitioners contend that their acceptance of the trustee's plan was with the specific agreement and understanding their liens were to be preserved and remain intact until they received full payment of their claims.

5. Petitioners contend that it was for the interests of general creditors to keep the estate intact, as this was their only hope or possibility of realizing anything on their claims, and it is inequitable and unjust that they should be penalized to their irreparable damage and injury, especially so, as they have been open and above board with all parties, unless they be placed and restored to their original condition and status.

6. Petitioners contend that the only persons or parties who are concerned or ever had an interest in this estate were the creditors, and it is not against public policy or interest for the trustee and the creditors to formulate a plan for the equitable administration and distribution of the assets of the estate.

7. Petitioners contend that after the agreement of all the parties as to the method of administration and distribution of the assets of the estate, and the subsequent distribution of dividends, all parties and creditors who participated in such plan and received dividends are estopped and barred by laches to object thereto.

8. Petitioners contend that good faith and equity on the part of creditors who now after a period of more than sixteen years make objections to the allowance of their claims as secured, requires that such creditors be estopped, or to restore petitioners to the same condition and status as originally had.

9. Petitioners contend there has been no fraud or misrepresentations such as would mislead others or cause them to suffer to their damage or injury. That all of their acts and conduct have received the approval of the trustee and the bankruptcy court.

10. Petitioners contend that over this long period of time, without any objections on the part of the Chase Bank, they had every right to rely and believe that the Chase Bank had acquiesced to the plan of the trustee.

Prayer for the Writ

WHEREFORE, your petitioners pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day to be named therein, a transcript of record and proceedings herein; and, that the order of the United States Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court; and that your petitioners have such further and other relief in the premises as to this Honorable Court may seem just and proper.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 371

UNITED STATES NATIONAL BANK IN JOHNSTOWN, AND FIRST NATIONAL BANK OF SOUTH FORK,

Petitioners,

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CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AND LESTER LARIMER, TRUSTEE

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

1

Opinion Below

Argued January 24, 1946.
Decided May 7, 1946.

The United States Circuit Court of Appeals for the Third Circuit rendered a decision on May 7th, 1946, and is reported — Fed. (2) — (R. 79-86).

Dissenting opinion (R. 86-89).

2

Jurisdiction

The petition to which this is attached sufficiently states facts that appear material to the consideration of the questions presented.

3

Statement of the Case

The essential facts in the instant case are fully set forth in the accompanying petition for Writ of Certiorari, and in the interests of brevity are not further elaborated upon. All necessary points involved shall be discussed in the argument to follow.

4

Summary of Argument

1. A lien acquired by legal proceedings on the property of the bankrupt more than four months prior to the filing of the petition in bankruptcy, and adjudication, is not affected by the bankruptcy of the debtor.

2. A secured creditor does not lose or waive his security where he accepts dividends from the estate which are realized through a plan proposed by the trustee and which is accepted by all creditors, which plan was formulated and made for the express purpose of inducing such secured creditors to forbear in the enforcement of their liens.

3. A creditor is subject to laches and estoppel where there is long delay and inaction on his part to assert an objection to the allowance of a claim.

4. A Bankruptcy Court is a Court of Equity and will look through the form of a statute to the substance thereof.

It will administer the law according to its spirit and not merely by letter.

Argument

Point 1

A lien, acquired by legal proceedings on the property of the bankrupt more than four months prior to the filing of the petition and adjudication in bankruptcy, is not affected by the bankruptcy of the debtor.

Although the Bankruptcy Act contains no express provision preserving liens acquired by legal proceedings more than four months before the petition is filed, by virtue of the provisions in Sec. 67c, and 67f, avoiding only liens obtained by legal proceedings within that period, it is clearly implied that liens acquired by such proceedings before the four-month period are saved from operation of the Act, and consequently, a lien so acquired, if valid under the state law, is not affected nor dissolved by the subsequent bankruptcy of the debtor. *Dunn Salmon Co. v. Pillmore*, 106 N. Y. S. 85; *In re Blumberg*, 1 A. B. R. 633; *Matter of Schow*, 32 A. B. R. 494.

In Stratton v. New, 51 S. Ct. 465, 75 L. Ed. 1010, Justice Roberts said, on page 1094: "The bankruptcy law contains no express provision preserving liens acquired by legal proceedings more than four months before the petition is filed. But it is clearly implied that they shall be saved from operation of the law, for sec. 67f voids only liens acquired by legal proceedings within that period. It has consequently been held that those acquired earlier, if valid under state law, are preserved, and will be accorded priority by the bankruptcy court in the distribution of the estate, in accordance with applicable local law."

Also *In re Wood*, 95 F. 946; *Re Frazer*, 261 F. 558.

In re Torchia, 188 F. 207, which holds—"Under the law of Pennsylvania, rents collected by the trustee from the property of a bankrupt which is subject to valid liens, belongs to the lienholders and not to the general estate."

Re: *Merchants and Mechanics Bank of Columbus*, 61 F. (2) 814.

In re Knox-Powell-Stockton Co., 100 F. (2) 979—It is clear that adjudication in bankruptcy does not exist with valid liens, and that the trustee takes the property subject to all such liens as would have been enforceable against it in the hands of the bankrupt himself.

Seymour v. Wildgen, 137 F. (2) 160—What property belongs to the bankrupt as of the date of bankruptcy; what liens, if any exist thereon; the validity of such liens, order of priority among creditors having liens, and other cognate questions are governed by the law of the State and not by provisions of the Bankruptcy Act.

In re Webber Motor Co., 52 F. Supp. 742—A trustee in bankruptcy, by operation of law, succeeds to the property of the bankrupt subject to all liens, claims, incumbrances and equities which were enforceable against the bankrupt.

Attention is also directed to the proofs of claim filed by the petitioners (R. 11; 12; 19-20). Such claims did contain statements and recitals of the nature and character of such claims and the securities attaching thereto. *These claims had been filed and allowed as secured claims on the property of the bankrupt.* The security and liens of the petitioners were recognized by the bankruptcy court, the trustee, and all creditors. Evidence thereof was made by the referee's reports on distribution of the assets. *There were no objections made by creditors to the dividends declared.*

Wuerpel v. *Commercial Germania Trust, et al., 38 A. B. R. 223*—The filing of a claim as unsecured which has been al-

lowed and on which a dividend has been paid does not estop the claimant from subsequently asserting a right to priority for the first time in the absence of proof to show that the trustee has been misled or injured by the delay in asserting the alleged priority.

Re *Ashland Steel Co.*, 21-A. B. R. 834.

POINT 2

A secured creditor does not lose or waive his security where he accepts dividends from the estate which are realized through a plan proposed by the trustee and which has been accepted by all creditors, which plan was formulated and made for the express purpose of inducing such secured creditors to forbear in the enforcement of their liens.

In the instant case, it was established that there were admitted legal liens against the real estate of the bankrupt which had been obtained more than four months prior to the date on which the petition was filed. The legality of such liens was not questioned by the trustee nor any creditors. The property to which such liens attached was valued by the trustee and parties of interest in the estate for the sum of $90,000.00. The claims of the first and second judgment lien creditors amounted in the aggregate to approximately $28,500.00. This made it apparent that there might be a substantial equity in such asset for the benefit of creditors.

The apparent value of the securities of the first and second judgment lien creditors must have been determined at the very outset, and this by agreement between such lien creditors and the trustee, and the attorney for the trustee. That other creditors were informed and had personal knowledge thereof is attested by the records of the referee. Section 57h, of the Bankruptcy Act provides a number of methods for determining or ascertaining the value of securities.

Among them, it is provided that the value may be established between such secured creditors and the trustee *by agreement. First National Bank* v. *Cameron*, 31 A. B. R. 605; *Re: Rochester Pad & Wrapper Co.*, 20 F. Supp. 295, 34 A. B. R. (NS) 396.

In re: Grive, 153 F. 597—The court said "Let the trustee and creditors holding such liens get together and determine by agreement or compromise or arbitration what the security covered by such liens is worth."

As stated above, there was a clear recognition on the part of all concerned that the equity in the said asset might be of considerable value, provided however, that the asset be left intact. That this was the case and real condition, is aptly phrased and stated in the referee's report or opinion (R. 25) wherein he says as follows:

> *"Contrary to the ordinary policy of early liquidation, the general creditors without exception have approved the policy of the Trustee in retaining intact the assets of the estate and accepting income therefrom. The wisdom of this procedure is quite apparent. The assets which would have been sold for an insignificant amount, have, through the years, produced substantial income which has been distributed to creditors in the way of dividends. In order to administer the estate on this basis, it was necessary to have the approval of the two lien creditors for the reason it would have been inequitable to demand that the security for their liens, consisting of an undivided interest in certain real estate, be kept intact for an indefinite period rather than be sold in order to liquidate the liens. It was assumed from the outset that there was sufficient security in the way of real estate against which the two judgments, the first of which was that of the United States National Bank of Johnstown, and the other the judgment of the First National Bank of South Fork, were liens, to pay them in full, together with interest and costs."*

The plan for administration and distribution of the assets of the estate, as proposed by the trustee and his attorney, and which was accepted by all creditors is stated in the record (R. 26-27). With reference to the question whether the lien creditors waived their security by the acceptance of the plan for distribution, reference is again made to the referee's opinion (R. 30), which states as follows: "*The matter was approached on this theory—the security was worth more than the liens against it, and it would be an advantage to the unsecured creditors to have the estate remain intact—to accomplish this purpose the lienors should be importuned not to liquidate their security—that it would be to the advantage of general creditors to get the lien creditors out of the road—that as an inducement for not selling their security, the lienors would be permitted to participate in the dividends from the personalty with other creditors—all this with the understanding that the liens were to remain intact until the claims were paid in full.*"

As has been stated previously, the plan proposed by the trustee was actually accepted and adopted by all creditors in this bankruptcy proceeding, and this plan as administered to by the trustee was the basis for all subsequent distributions to creditors. During the period from November 15, 1935 to December 2, 1942, seven dividends were paid on that basis (R. 27; 60). *In all of such dividends there was consent and acquiescence on the part of the Chase Bank, as well as by other creditors.* At all times, The Chase Bank took an interest and active part in the affairs of the bankrupt estate, and their attorneys attended many meetings of creditors. Further, the Chase Bank has admitted and stipulated that they received statements showing them how the dividends were distributed or that such records were available to them (R. 61).

That there was never any intent on the part of the lien holders to waive their securities was recognized by the creditors and the opinion of the referee (R. 30-31) brings this clearly out. For the record, the two lien creditors have carefully revived their judgments in the manner provided by law, and the trustee has been made a party to such proceedings (R. 31, and footnote, R. 89). *A Lien is not waived nor lost by any acts or conduct on the part of the holders of the lien that is not inconsistent with his intention to claim the lien, and is not affected by bad faith or fraud. Re: Collingwood Motor Sales Co.*, 72 F. (2) 137; *Re: Marine Transit Corp.*, 94 F. (2) 7.

The trustee, generally, is not obliged to administer property burdened with a valid lien, and he may be permitted to abandon the property where it appears there is no equity therein or nothing to be administered, *but if it appears in the exercise of sound and honest discretion that there is a substantial equity in the property for the general creditors, it is the right and duty of the trustee to administer the property and to realize on such equity for the benefit of general creditors, and in the event of such administration, the lien creditors lose none of their rights. Lerner Stores Corp.* v. *Electric Maid Bake Shops*, 24 F. (2) 780; *Britton* v. *Western Iowa Co.*, 9 F. (2) 488.

Hartford Accident & Indemnity Co. v. *Coggin*, 29 A. B. R. (NS) 514 Reversing 9 F. Supp. 785.

Although a claim is filed as unsecured and the claimant participates in the election of a trustee, security held by the claimant is not thereby waived, where it appears that the filing was inadvertent and the instruments evidencing the security were attached to the claim.

Also *Re: Ashland Steel Co.*, 21 A. B. R. 834.

In Wuerpel v. Commercial Germania Trust, etc., 38 A. B. R. 223, *it was held that the filing of an unsecured claim which had been allowed and on which a dividend had been paid, does not estop the claimant from subsequently asserting a right to priority for the first time in the absence of proof that the trustee had been misled or injured by the delay in asserting the alleged priority.*

Re: Purvis, 293 F. 102, 1 A. B. R. (NS) 595.

In re Grive, 153 F. 597, the Court said, "*In treating the claims strictly as unsecured for the purposes of a dividend, further thought is required. Here equity steps in and forbids one to follow too literally the text of the bankruptcy law. From an equitable point of view, and looking at the final results, the claims in question ought to be treated as secured.*"

In *Horton v. Queen's County Mach. Corp.*, 166 N. Y. S. 662, Justice Copsey said:

> "*Defendant's third contention is that the plaintiffs have waived their rights to enforce their lien. This is Predicated upon the contention that the plaintiffs filed their claim with the bankruptcy court and accepted dividends the same as all general creditors. Plaintiffs did file their claim but in it asserted their right to the very lien now sought to be foreclosed. There was no waiver involved in that act. They had the right to prove their lien, Bankr. Act 57 subd. h. It is stated as a general rule that if a secured creditor proves his debt as unsecured, he thereby waives his security. Collier on Bankr. (9th Ed) p. 726. . . . But here, the plaintiffs did not prove their claim as an unsecured debt. On the contrary, in their proof of claim, they asserted their right to their lien as security.*"

Here, as in the above matter, the petitioners have always asserted their security in the claims they have filed (R. 10; 11; 12-13). In the petition of the Chase Bank, they specifi-

cally alleged petitioners had always asserted their security (R. 6-9) (R. 15-18; 19-20).

Point 3

A creditor is subject to laches and estoppel where there is long delay and inaction on his part to assert an objection to the allowance of a claim.

It has been repeatedly stated that the plan submitted was formulated by the trustee was accepted by the lien creditors with the specific understanding that their liens upon the asset of the bankrupt were to remain intact until they had been paid in full (R. 30). Following such agreement, the trustee proceeded with the administration of the estate in accordance thereto, and thereafter, seven dividends were paid to creditors.

It was not until October 17, 1942, sixteen years after the adjudication in bankruptcy, that the Chase Bank filed its petition to adjudge that the United States National Bank had waived its lien (R. 6-9). During the intervening period, they had participated and accepted seven dividends which had been distributed, and to none of which they had filed objections. *In consideration thereof, it is pertinent to note the remarks from the opinion of Gibson, District Judge (R. 76).*

> *"The court is definitely satisfied that counsel for the Chase Bank had recommended and had full knowledge of the agreement of general creditors that lien holders, in return for their ceasing to attempt to realize upon their liens, should participate in both the judgment creditor and general funds. This agreement was of great benefit to the general creditors. Had the secured creditors realized upon their liens a sufficient amount would have been obtained to satisfy them, but the effect of it would have been almost the total wreck of the general claims. When this fact is joined to the influence of counsel for the Chase National Bank in promoting the*

participation agreement, and the further fact that the bank, without any demur whatsoever, had knowledge of the seven distributions, prior to its exceptions to the Referee's orders, wherein the lien holders had received all the amount distributed from the realty fund and had participated in the general fund, it would seem that the Chase National Bank is equitably estopped from relying upon a contention which has become entirely technical, strong as its position might have been under other circumstances."

In re Thorton, 7 F. Supp. 613—A bankruptcy court will apply the equitable doctrine of estoppel.

The doctrine of laches may properly be applicable to prevent the assertion of state objections or defenses against claims in bankruptcy, and long delay or inaction on the part of a creditor resulting in prejudice or injury to the claimant will prevent the objection from being made, particularly where the claim has previously been allowed; and for this purpose the laches or inaction of the trustee will be imputed to creditors who will be bound thereby. French v. Long, 42 F. (2) 45; *Cooper* v. *Rauch*, 82 F. (2) 1005.

In re: National Public Service Corp., 68 F. (2) 459. In this case, an appeal was made to an order allowing a compromise plan. In the opinion of Justice Hand, p. 463, it is stated as follows:

"The utilities Power and Light Company, as we have said, did indeed complain to the trustee, and its attorneys at the outset; they were told these gentlemen saw no impropriety in the situation. They did not then question the Referee; instead they continued to work along with the trustee, its attorneys, and the creditors' committees in consideration of the many reorganization plans. Nobody would have supposed that they meant to bring the matter up if any plan had got acceptance; good faith forbade such a course. After all plans for reorganization broke down, they co-operated in the exceedingly onerous work of preparing a compromise

with the bank; they did not seek to balk this because of the single administration. The compromise was settled; the trustee's petition for leave was filed; the time for creditors' meeting was fixed and creditors advised. Not till then, and then by motion on the return day, on the very day before the meeting did they even intimate to any court that the whole proceeding had all along been violating the cardinal doctrines of equity. After complaisance *of over eight months during which they had gone along hand in hand with the trustee, they proposed to upset the compromise and to change the fixture of administration of the estate. Other creditors may be entitled to ask us to do this, but we are not disposed to hear that complaint in the mouths of the appellant."*

In re: American S. S. Nav. Co., 14 F. Supp. 106. In this case a petition of bankruptcy was filed on March 9, 1920, and the company was in due course adjudged a bankrupt. A creditor filed a claim in February, 1921 for the sum of $6113 alleging damages arising from a breach of contract. The claim appears to have been allowed because in August, 1929, more than eight years later, a schedule for distribution was submitted in which this claim received its distributive share. At that time, one of the creditors filed an objection to its allowance, and upon appeal, Justice Kirkpatrick held:

"That the debt was duly liquidated at the amount claimed and that the trustee and creditors appeared to have waived the matter of its liquidation. When the claim appeared in the referee's schedules for distribution, eight and one-half years later, that was the only time an objection was filed.

"The doctrine of laches is equally applicable in bankruptcy against stale defenses. Unconscionable delay in raising objections could only result in injury beyond repair to the claimant's ability to properly present his claim and meet the defense raised against it. Laches

of the trustee must be imputed to those for whom he acts."

POINT 4

A Bankruptcy Court is a Court of Equity and will look through the form of a statute to the substance thereof. It will administer the law according to its spirit and not merely by letter.

A court of bankruptcy is a court of equity. It seeks to administer the law according to its spirit, and not merely by letter. *In re: Kane*, 127 F. 552. Equitable doctrines and principles prevail therein and are controlling. The court will not permit itself to be used for purposes of perpetrating a fraud or attaining inequitable results. *In re; Fox West Coast Theatres*, 88 F. (2) 212.

The purpose of the Bankruptcy Act is to distribute the assets of the bankrupt equally and fairly among his creditors. Equality of distribution among the creditors is the end in view. Technicalities will be avoided and the construction will be adopted which will best promote the object of the Act. *Merchants & Mechanics Bank of Columbia* v. *Sewell*, 61 F. (2) 814; It permits creditors to supervise and direct liquidation of the estate. *Re Day Lumber Co.* 8 F. (2) 146.

In the instant case, it must be borne in mind that the assets of the bankrupt were in effect the property of the creditors entitled to liens. As the parties realized, if the lien creditors had foreclosed upon their liens and securities, there would have been little, if anything, left for general creditors.

As a practical result and effect of the plan which was adopted and carried out by the trustee, it really amounted to the trustee's redemption of the property to which the liens attached, on a deferred payment or installment basis. This, without any investment or risk on the part of the trustee or the creditors.

This plan was an agreement among the *only parties who had an interest* in the estate. No other persons or concerns were interested in the proceedings. It allowed and enabled creditors, subject to their particular interests and character of claims to participate and receive some benefit. Can it justly and honestly be said that such an agreement between the trustee and creditors, is against public policy and interest?

In re: Interstate Refineries, 18 F. (2) 360—*The administration and distribution of the property of a bankrupt is a proceedings in equity, and the proceeding in a bankruptcy court to establish and enforce a lien or claim against the assets of the bankrupt is equitable in nature. Such a court will look through the form of a statute to the substance thereof, and will enforce a right as it is found to exist.*

The rights of your petitioners rise to a higher plane than the strict interpretation oft he Act. The Act is a remedial statute, and should therefore be interpreted reasonably and according to the fair import of its terms with a view to effect its object and to promote justice. It must be given a broad and liberal construction. *Re: Calhoun Supply Co.*, 26 A. B. R. 528.

It is respectfully submitted, that in order that the errors herein pointed out may be corrected and justice done, the judgment of the United States Circuit Court of Appeals for the Third Circuit be reviewed and reversed, and that to such an end a writ of certiorari be granted.

Respectfully submitted,

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